Case Law of the Court of Justice of the European Union and the General Court

Squintani, Lorenzo

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Case Law Section

Case Law of the Court of Justice of the European Union and the General Court

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Lorenzo Squintani
University of Groningen
l.squintani@rug.nl

Overview of the Judgments[1]

On the Invocability of the Aarhus Convention in the Context of Regulation of the Marketing of Glyphosate

Judgment of the General Court (Fifth Chamber) of 27 September 2018 in Case T-12/17 – *Mellifera eV, Vereinigung für wesensgemäße Bienenhaltung*

Subject Matter

This case concerns an action for annulment against the Commission's refusal to grant internal review under Regulation (EC) n. 1367/2006 of Commission Implementing Regulation (EU) 2016/1056 extending the period of approval of the active substance 'glyphosate'. A German non-governmental organisation for the protection of bees, Mellifera eV, Vereinigung für wesensgemäße Bienenhaltung, went to the General Court to have the Commission's refusal annulled, by relying among others on the Aarhus Convention to challenge the manner in which the EU implements it. The General Court did not only state that Article 9(3) of the Convention does not have direct effect, but also that it cannot be

1 Only judgements and orders available on Curia.eu under the subject matter 'environment' and 'provisions concerning the institutions/access to documents' have been included in this report.

used to review the legality of the acts of the Union, as the following extracts in French underline (the judgment is not available in English).

Key Findings

85 Toutefois, il ressort de la jurisprudence que l'article 9, paragraphe 3, de la convention d'Aarhus n'est pas directement applicable dans l'ordre juridique de l'Union et ne peut pas non plus être invoqué comme critère de légalité des actes de l'Union. Il ressort en outre de cette jurisprudence qu'il découle de l'article 9, paragraphe 3, de la convention d'Aarhus que les parties contractantes à celle-ci disposent d'une large marge d'appréciation quant à la définition des modalités de mise en œuvre des « procédures administratives ou judiciaires » visées par cette disposition (arrêt du 13 janvier 2015, *Conseil et Commission/Stichting Natuur en Milieu et Pesticide Action Network Europe*, C-404/12 P et C-405/12 P, EU:C:2015:5, points 47 à 53).

86 L'argument de la requérante selon lequel cette jurisprudence ne saurait être maintenue au regard des recommandations du comité d'examen du respect de la convention d'Aarhus ne peut qu'être rejeté. En tout état de cause, à supposer que ces recommandations soient contraignantes à l'égard des parties contractantes à la convention d'Aarhus, il s'agit là, ainsi que la Commission l'a observé à juste titre, d'un simple projet qui, comme la requérante l'a reconnu dans la réplique,n'a été adopté par ledit comité que le 17 mars 2017, c'est-à-dire après la date d'adoption de la décision attaquée. Il n'est donc pas nécessaire de répondre à la question de savoir si, comme la Commission le fait valoir, en faisant référence au guide d'application de la convention d'Aarhus, les recommandations du comité d'examen du respect de la convention d'Aarhus devaient être adoptées par la réunion des parties, prévue à l'article 10 de la convention d'Aarhus, ou si cela n'était pas nécessaire, comme la requérante le fait valoir.

87 Pour ce qui est de l'argument de la requérante selon lequel il serait nécessaire de procéder à une interprétation conforme au droit international de l'article 10, paragraphe 1, et de l'article 2, paragraphe 1, sous g), du règlement no 1367/2006, ce qui devrait avoir pour conséquence que des actes tels que les mesures portant prolongation de la période d'approbation d'une substance active, adoptées sur le fondement de l'article 17 du règlement no 1107/2009, devraient être considérés comme relevant de ces dispositions, il convient de rappeler qu'une interprétation conforme au droit international d'une disposition du droit dérivé de l'Union n'est

possible que si ladite disposition permet une telle interprétation et ne peut servir de fondement à une interprétation contra legem de cette disposition. Or, étant donné que, en vertu de l'article 10, paragraphe 1, du règlement no 1367/2006, seuls les « acte[s] administratif[s] », qui sont définis à l'article 2, paragraphe 1, sous g), de ce même règlement comme étant des « mesure[s] de portée individuelle », peuvent faire l'objet d'une demande de réexamen interne, il n'est pas possible d'interpréter ces dispositions dans le sens que les actes administratifs visés par ces dispositions engloberaient les actes de portée générale, étant donné qu'une telle interprétation serait contra legem (voir, en ce sens, ordonnance du 17 juillet 2015, *EEB/Commission*, T-565/14, non publiée, EU:T:2015:559, points 31 à 33).

On the Criteria to Establish the Sustainability of Bio-Liquids

Judgment of the Court (Second Chamber) of 4 October 2018 in Case C-242/17 – *Legatoria Editoriale Giovanni Olivotto* (*L.E.G.O.*) *SpA*

Subject Matter

This request for a preliminary ruling concerns the interpretation of Directive 2009/28/EC on the promotion of the use of energy from renewable sources. It stems from a proceeding between the operator of a thermoelectric installation, L.E.G.O., and various Italian authorities that had withdrawn the green certificate scheme granted to L.E.G.O. as the latter failed to comply with the standard on the sustainability of bio-liquids applying in Italy, which are more stringent than the criteria on sustainability for biofuels established in accordance with EU law. As EU law on this point represents a case of maximum harmonisation, the Italian court hearing the case decided to ask to the Court of Justice whether the Directive or Article 34 TFEU precludes national standards such as the Italian one on bio-liquids. The Court of Justice answered both questions in the negative (the judgment is not available in English).

Judgment

1 L'article 18, paragraphe 7, de la directive 2009/28/CE du Parlement européen et du Conseil, du 23 avril 2009, relative à la promotion de l'utilisation de l'énergie produite à partir de sources renouvelables et modifiant puis abrogeant les directives 2001/77/CE et 2003/30/CE, lu en combinaison avec la décision d'exécution 2011/438/UE de la Commission, du 19 juillet 2011, portant reconnaissance du système ISCC (International Sustainability and Carbon Certification) pour l'établissement de la conformité avec les critères de durabilité des directives du Parlement européen

et du Conseil 2009/28 et 2009/30/CE, doit être interprété en ce sens qu'il ne s'oppose pas à une réglementation nationale, telle que celle en cause au principal, imposant aux opérateurs économiques des conditions spécifiques, différentes et plus importantes, pour la certification de la durabilité des bioliquides, que celles prévues par un système volontaire de certification de la durabilité, tel que le système ISCC, reconnu par ladite décision d'exécution, adoptée par la Commission européenne conformément à l'article 18, paragraphe 4, de ladite directive, dans la mesure où ce système a été approuvé pour les seuls biocarburants et où lesdites conditions ne concernent que les bioliquides.

2 Le droit de l'Union, en particulier l'article 34 TFUE et l'article 18, paragraphes 1 et 3, de la directive 2009/28, doit être interprété en ce sens qu'il ne s'oppose pas à ce qu'une réglementation nationale, telle que celle en cause au principal, impose un système national de vérification de la durabilité des bioliquides qui prévoit que tous les opérateurs économiques intervenant dans la chaîne d'approvisionnement du produit, même lorsqu'il s'agit d'intermédiaires qui n'entrent pas physiquement en possession des lots de bioliquides, sont tenus à certaines obligations de certification, de communication et d'information découlant dudit système.

On the Temporal Application of the Provisions of the EIA Directive on the Costs of Proceedings

Judgment of the Court (First Chamber) of 17 October 2018 in Case C-167/17 – *Volkmar Klohn*

Subject Matter

This request for a preliminary ruling concerns the interpretation of the fifth paragraph of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive). The request has been made in proceedings between Mr Volkmar Klohn and An Bord Pleanála (the Planning Appeals Board, Ireland) ('the Board') concerning the burden of the costs of the judicial proceedings brought by Mr Klohn against the planning permission granted by the Board for the construction in Achonry, County Sligo (Ireland) of a fallen animal inspection unit for animals from across Ireland. This action was started before the deadline to transpose Article 10a of the EIA Directive had elapsed, while the decision about the allocation of the costs of the proceedings did. The national court hearing the appeal of Mr Klohn against the decision of the Taxing Master ordering him to pay 86.000 Euro. The referring court asked, in particular,

whether the not prohibitively expensive rule has directly effect and whether the not prohibitively expensive rule it applies to proceedings brought before the date on which the time limit for transposing that article expired.

Key Findings

32 The Court has held in its judgment of 15 March 2018, North East Pylon Pressure Campaignand Sheehy (C-470/16, EU:C:2018:185, paragraphs 52 and 58), that Article 9(4) of the Aarhus Convention is not directly applicable.

33 As the Court does not assess the direct applicability of the provisions of an agreement signed by the European Union according to criteria other than those that it uses in order to determine whether the provisions of a directive are directly applicable (see, to that effect, judgment of 30 September 1987, *Demirel*, 12/86, EU:C:1987:400, paragraph 14), it may also be concluded from the judgment mentioned in the preceding paragraph that the not prohibitively expensive rule in the fifth paragraph of Article 10a of Directive 85/337 as amended does not have direct effect.

34 Given that the provisions of Directive 85/337 as amended at issue do not have direct effect and were transposed belatedly into the legal system of the Member State concerned, the national courts of that Member State are required to interpret national law so far as possible, once the time limit for the Member States to transpose those provisions has expired, with a view to achieving the objective sought by those provisions, favouring the interpretation of the national rules which is the most consistent with that purpose in order thereby to achieve an outcome compatible with the provisions of the directive (see, to that effect, judgment of 4 July 2006, *Adelener and Others*, C-212/04, EU:C:2006:443, paragraph 115 and operative part).

46 In the light of the objective of the not prohibitively expensive rule, which consists in altering the allocation of costs in certain judicial proceedings, proceedings brought before the expiry of the time limit for transposing Directive 2003/35 must be regarded as a situation which arose under the old rule. In addition, the decision on the allocation of costs taken by the court at the end of the proceedings represents a future, indeed uncertain, effect of the ongoing proceedings. Consequently, national courts are under an obligation, when deciding on the allocation of costs in proceedings which were ongoing as at the date on which the time limit for transposing that directive expired, to interpret national law in order to achieve

so far as possible an outcome consistent with the objective pursued by the not prohibitively expensive rule.

47 In that regard, there is no need to distinguish between costs depending on whether they have in practice been incurred before or after the end of the transposition period, provided that the decision on the allocation of costs has not been taken as at that date and that therefore the obligation to interpret national law in conformity with the not prohibitively expensive rule is applicable to that decision, as stated in the preceding paragraph. In addition, the Court has held that the prohibitive nature of proceedings must be assessed as a whole, taking into account all the costs borne by the party concerned (judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraph 28).

On the Protection of the Harbour Porpoise Species in the UK

Judgment of the Court (Sixth Chamber) of 18 October 2018 in Case C-669/16 – *European Commission v United Kingdom of Great Britain and Northern Ireland*

Subject Matter

This case concerns an infringement procedure against the United Kingdom. By its action, the European Commission seeks a declaration that, by failing to designate sites for the protection of the harbour porpoise (Phocoena phocoena), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4(1) and Annexes II and III of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and that, accordingly, by failing to contribute to the creation of the Natura 2000 network in proportion to the representation within its territory of the habitats of that species, the United Kingdom has also failed to fulfil its obligations under Article 3(2) of that directive.

Judgment

Declares that, by failing to propose and transmit, within the period prescribed, pursuant to Article 4(1) and Annexes II and III of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, a list indicating a sufficient number of sites hosting the harbour porpoise (*Phocoena phocoena*) and by failing, to that extent, to contribute, pursuant to Article 3(2) of that directive, to the creation of the Natura 2000 network in proportion to the representation within its territory of the habitats of that

species, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under those provisions.

On the Room for a Programmatic Approach under the Habitats Directive

Judgment of the Court (Second Chamber) of 7 November 2018 in Joined Cases C-293/17 and C-294/17 – *Coöperatie Mobilisation for the Environment UA, and Vereniging Leefmilieu*

Subject Matter

These requests for a preliminary ruling concern the interpretation of Article 6 of the Habitats Directive. The requests have been made in proceedings between Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu, on the one hand, and College van gedeputeerde staten van Limburg (Provincial Government of Limburg, Netherlands) and College van gedeputeerde staten van Gelderland (Provincial Government of Gelderland, Netherlands) on the other (Case C-293/17), and Stichting Werkgroep Behoud de Peel, on the one hand, and College van gedeputeerde staten van Noord-Brabant (Provincial Government of Noord-Brabant, Netherlands) on the other (Case C-294/17) concerning authorisation schemes for agricultural activities which cause nitrogen deposition on 'Natura 2000' European ecological network sites. The national court referred many questions aiming, in essence, to establish the meaning of the concept of a 'project' under Article 6(3) of the Directive, whether it is possible to assess the compatibility of projects at the level of a plan, and what measures having positive effects on the status of conservation of a Natura 2000 site can be taken into consideration when assessing the effects of a project on such a site.

Judgment

1 Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a 'project' within the meaning of that provision, even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a 'project' within the meaning of Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

2 Article 6(3) of Directive 92/43 must be interpreted as meaning that a recurring activity, such as the application of fertilisers on the surface of land or below its surface, authorised under national law before the entry into force of that directive, may be regarded as one and the same project for the purposes of that provision, exempted from a new authorisation procedure, in so far as it constitutes a single operation characterised by a common purpose, continuity and, inter alia, the location and the conditions in which it is carried out being the same. If a single project was authorised before the system of protection laid down by that provision became applicable to the site in question, the carrying out of that project may nevertheless fall within the scope of Article 6(2) of that directive.

3 Article 6(3) of Directive 92/43 must be interpreted as not precluding national programmatic legislation which allows the competent authorities to authorise projects on the basis of an 'appropriate assessment' within the meaning of that provision, carried out in advance and in which a specific overall amount of nitrogen deposition has been deemed compatible with that legislation's objectives of protection. That is so, however, only in so far as a thorough and in-depth examination of the scientific soundness of that assessment makes it possible to ensure that there is no reasonable scientific doubt as to the absence of adverse effects of each plan or project on the integrity of the site concerned, which it is for the national court to ascertain.

4 Article 6(3) of Directive 92/43 must be interpreted as not precluding national programmatic legislation, such as that at issue in the main proceedings, exempting certain projects which do not exceed a certain threshold value or a certain limit value in terms of nitrogen deposition from the requirement for individual approval, if the national court is satisfied that the 'appropriate assessment' within the meaning of that provision, carried out in advance, meets the criterion that there is no reasonable scientific doubt as to the lack of adverse effects of those plans or projects on the integrity of the sites concerned.

5 Article 6(3) of Directive 92/43 must be interpreted as precluding national programmatic legislation, such as that at issue in the main proceedings, which allows a certain category of projects, in the present case the application of fertilisers on the surface of land or below its surface and the grazing of cattle, to be implemented without being subject to a

permit requirement and, accordingly, to an individualised appropriate assessment of its implications for the sites concerned, unless the objective circumstances make it possible to rule out with certainty any possibility that those projects, individually or in combination with other projects, may significantly affect those sites, which it is for the referring court to ascertain.

6 Article 6(3) of Directive 92/43 must be interpreted as meaning that an 'appropriate assessment' within the meaning of that provision may not take into account the existence of 'conservation measures' within the meaning of paragraph 1 of that article, 'preventive measures' within the meaning of paragraph 2 of that article, measures specifically adopted for a programme such as that at issue in the main proceedings or 'autonomous' measures, in so far as those measures are not part of that programme, if the expected benefits of those measures are not certain at the time of that assessment.

7 Article 6(2) of Directive 92/43 must be interpreted as meaning that measures introduced by national legislation, such as that at issue in the main proceedings, including procedures for the surveillance and monitoring of farms whose activities cause nitrogen deposition and the possibility of imposing penalties, up to and including the closure of those farms, are sufficient for the purposes of complying with that provision.

On the Appropriateness of an Assessment under Article 6 of the Habitats Directive

Judgment of the Court (Second Chamber) of 7 November 2018 in Case C-461/17 – *Brian Holohan and Others*

Subject Matter

This request for a preliminary ruling concerns the interpretation of the Habitats Directive and of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive). The request has been made in proceedings where the opposing parties are Mr Brian Holohan, and Others, on the one hand, and An Bord Pleanála (the Board), on the other, concerning the granting of development consent for a project to extend the northern ring-road of the city of Kilkenny (Ireland). About the Habitats Directive, the referring court asked, in essence, to ascertain whether

Article 6(3) of the Habitats Directive must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue all the habitat types and species for which a site is protected, and, on the other, identify and examine both the effects of the proposed project on the species present on the site, but for which that site has not been listed, and the effects on habitat types and species to be found outside the boundaries of that site. Furthermore, it asked, in essence, to ascertain whether a competent authority may grant to a plan or project development consent which leaves for later decision the determination of certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, and, if so, whether those parameters may, at that later stage, be determined unilaterally by the developer and merely notified to that authority. Moreover, the referring court asked whether Article 6(3) of the Habitats Directive must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons capable of ensuring certainty that, notwithstanding such an opinion, there is no reasonable scientific doubt as to the environmental impact of the work envisaged on the site that is the subject of those findings. As regards the EIA Directive, the referring court asked whether Article 5(1) and (3) of, and Annex IV to, the EIA Directive must be interpreted as meaning that they require the developer to supply information that expressly addresses the potentially significant impact on all the species identified in the statement that is supplied pursuant to those provisions. Moreover, it asked whether Article 5(3)(d) of the EIA Directive must be interpreted as meaning that the developer must supply information in relation to the environmental effects both of the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account their environmental effects, even if such an alternative was rejected at an early stage.

Key Findings

37 Since, as stated in paragraphs 33 and 34 of the present judgment, all aspects which might affect those objectives must be identified and since the assessment carried out must contain complete, precise and definitive findings in that regard, it must be held that all the habitats and species for which the site is protected must be catalogued. A failure, in that assessment, to identify the entirety of the habitats and species for which the site has been listed would be to disregard the abovementioned requirements and, therefore, as observed, in essence, by the Advocate General in point 31 of her Opinion, would not be sufficient to dispel all reasonable scientific doubt as to the absence of adverse effects on the integrity of the

protected site (see, to that effect, judgment of 26 April 2017, *Commission v Germany*, C-142/16, EU:C:2017:301, paragraph 33).

40 In the light of the foregoing, the answer to the first three questions is that Article 6(3) of the Habitats Directive must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.

44 Those obligations, in accordance with the wording of Article 6(3) of the Habitats Directive, are borne not by the developer, even if the developer is, as in this case, a public authority, but by the competent authority, namely the authority that the Member States designate as responsible for performing the duties arising from that directive.

45 It follows that that provision requires the competent authority to catalogue and assess all aspects of a plan or project that might affect the conservation objectives of the protected site before granting the development consent at issue.

46 As also observed by the Advocate General in points 56 and 57 of her Opinion, only those parameters as to the effects of which there is no scientific doubt that they might affect the site can be entirely left to be decided later by the developer.

51 In circumstances such as those in the main proceedings, that requirement entails that the competent authority should be in a position to state to the requisite legal standard the reasons why it was able, prior to the granting of development consent, to achieve certainty, notwithstanding the opinion of its inspector asking that it obtain additional information, that there is no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned.

52 In the light of the foregoing, the answer to the 9th, 10th and 11th questions is that Article 6(3) of the Habitats Directive must be interpreted as meaning that, where the competent authority rejects the findings in

a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

59 In the light of the foregoing, the answer to the fourth question is that Article 5(1) and (3) of, and Annex IV to, the EIA Directive must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.

69 In the light of the foregoing, the answer to the fifth, sixth and seventh questions is that Article 5(3)(d) of the EIA Directive must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.

Editor's Appraisal of the Reported Case Law

The reported period was a relatively quiet one. Still it signed important developments in two areas of EU environmental law: judicial protection under the Aarhus Convention and nature conservation under the Habitats Directive.

As regards the first aspect, the two judgments dedicated to this topic and reviewed in this appraisal, the *Klohn* Case and the *Mellifera* Case, can come as a disappointment to those who had seen in the *Protect* case,[2] reviewed by Sobotta in this rubric in JEEPL 2018/2,[3] a changing point on the invocability of Article 9(3) of the Convention. While in *Protect* the absence of direct effect was *de facto* compensated by the possibility to review whether a Member State had remained within the limit of the discretionary power offered to it by EU law, in *Millifera* this approach was rejected, without referring to the *Protect* case. It remains to be seen whether this different approach is limited to actions

2 Case C-664/15, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd*, CLI:EU:C:2017:987.

3 C. Sobotta, *New Cases on Article 9 of the Aarhus Convention*, (2018) JEEPL 2, pp. 241–258.

brought against acts of the EU, as in *Millifera*, or it applies also in the context of actions against national acts. The *Klohn* case suggests the latter to be the case. This case does not concern Article 9(3) of the Aarhus Convention but Article 9(4) thereof. Still, also in this case, the Court of Justice ruled that this provision does not have direct effect and did not compensate this absence by allowing the review of the legality of the national act. It simply ruled on the possibility to apply consistent interpretation, just like the Court did in the *Pylon* case,[4] also reviewed by Sobotta in JEEPL 2018/2. However, as the referring court has explicitly asked only to rule on these two methods of invocability, there is still room for debate. Surely, in both cases, the EU judiciary has lost a chance to increase the level of effectiveness of the EU system for judicial protection in environmental matters.

As regards nature conservation, beside the infringement procedure against the UK for failing to designate a Natura 2000 site, which in light of Brexit could be of limited relevance, the Court of Justice confirmed the stringency of Article 6(3) of the Directive, but opened the door for interesting developments. In the preliminary ruling from the Netherlands, the judgment about the Dutch Programmatic Approach of Nitrogen, the Court of Justice confirmed the predictions of Schoukens made in JEEPL 2018/2 about the compatibility of the Dutch approach with the Directive.[5] Basically, the Dutch approach will have to be modified. The Court held that a programmatic approach can only be compatible with Article 6(3) if it is ensured that (1) the appropriate assessment of a specific project is not detached from the conservation goals of the affected Nature 2000 site (so-called delinking effect),[6] and (2) it leaves no scientific doubt about the absence of negative effects following the adoption of mitigation measures (the current Dutch approach complies with neither of these conditions). Clearly, this judgment of the Court opens the doors for the development of a programmatic approach in the field of nature conservation. Given the great emphasis posed on the need of no-scientific doubts in this context, it can be expected that new judgments will arise about the criteria that needs to be fulfilled to prove the validity of a scientific assessment. The topic of science in court has recently been discussed extensively in literature

4 Case C-470/16, *North East Pylon Pressure Campaign and Shelly*, ECLI:EU:C:2018:185.

5 H. Schoukens, *The Quest for the Holy Grail and the Dutch Integrated Approach to Nitrogen: How to Align Adaptive Management Strategies with the EU Nature Directives?*, (2018) JEEPL 2, pp. 171–217.

6 L. Squintani and M. van Rijswick, *Improving Legal Certainty and Adaptability in the Programmatic Approach* (2016) 28 3 Journal of Environmental Law 443.

both in a special issue of EEELR[7] and an edited book by the U4 Environmental Law Network.[8] The *Holohan* case reviewed in this appraisal provides clear indications in this regard, also considering those given in the context of the EIA Directive. Most notably, the obligations to provide an explicit and detailed statement of reasons about all species identified in the statement and about all the considered alternatives to the chosen option, including those which were rejected at an early stage, will surely prove extra pressure on project developers and public authorities when arguing that a plan or project does not affect a Natura 2000 site. This is just a beginning. Future developments can be expected.

7 European Energy and Environmental Law Review (2018) 27 4 under redaction of guest editors Paloniitty and Eliantonio.

8 L. Squintani and others (eds), *Managing Facts and Feelings in Environmental Governance* (Edward Elgar 2019), chapters 4, 5 and 6, by Darpö, Wright and Schultz, repsectively.